

# HOUSE BILL 266

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CF 11r1140

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By: **Delegates Waldstreicher, Alston, Anderson, Arora, Aumann, Clippinger, Dumais, Frank, Frush, Haddaway–Riccio, Hough, Lee, Luedtke, McDermott, Mitchell, Morhaim, S. Robinson, Smigiel, Tarrant, Valderrama, Valentino–Smith, and Wilson**

Introduced and read first time: January 31, 2011

Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Human Trafficking Victim Protection Act**

3 FOR the purpose of authorizing a court to order a person who has been convicted of  
4 human trafficking to pay restitution to the victim for certain expenses incurred  
5 by the victim; providing for the verification of certain expenses alleged to be  
6 incurred by the victim; establishing that certain absences of the victim may not  
7 be a basis for denial of restitution; establishing that this Act may not be  
8 constructed to limit a person's right to certain restitution; clarifying that certain  
9 provisions of law related to restitution apply to an order of restitution under  
10 this Act; authorizing a person convicted of prostitution to file a petition to  
11 vacate the judgment if the person's involvement in prostitution was the result of  
12 the person having been a victim of human trafficking; establishing the  
13 requirements for a petition filed under this Act; requiring a person filing a  
14 petition under this Act to provide a certain notice to the State; authorizing the  
15 State to file a certain response in a certain period of time; requiring the court to  
16 hold a hearing on the petition under certain circumstances, with a certain  
17 exception; authorizing the court to take certain actions in ruling on the petition;  
18 requiring the court to state on the record the reasons for its ruling on the  
19 petition; establishing that a petitioner in a proceeding under this Act has the  
20 burden of proof; and generally relating to victims of human trafficking.

21 BY repealing and reenacting, with amendments,

22 Article – Criminal Law

23 Section 11–303

24 Annotated Code of Maryland

25 (2002 Volume and 2010 Supplement)

26 BY adding to

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Criminal Procedure  
2 Section 8–302  
3 Annotated Code of Maryland  
4 (2008 Replacement Volume and 2010 Supplement)

5 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
6 MARYLAND, That the Laws of Maryland read as follows:

7 **Article – Criminal Law**

8 11–303.

9 (a) (1) A person may not knowingly:

10 (i) take or cause another to be taken to any place for  
11 prostitution;

12 (ii) place, cause to be placed, or harbor another in any place for  
13 prostitution;

14 (iii) persuade, induce, entice, or encourage another to be taken to  
15 or placed in any place for prostitution;

16 (iv) receive consideration to procure for or place in a house of  
17 prostitution or elsewhere another with the intent of causing the other to engage in  
18 prostitution or assignation;

19 (v) engage in a device, scheme, or continuing course of conduct  
20 intended to cause another to believe that if the other did not take part in a sexually  
21 explicit performance, the other or a third person would suffer physical restraint or  
22 serious physical harm; or

23 (vi) destroy, conceal, remove, confiscate, or possess an actual or  
24 purported passport, immigration document, or government identification document of  
25 another while otherwise violating or attempting to violate this subsection.

26 (2) A parent, guardian, or person who has permanent or temporary  
27 care or custody or responsibility for supervision of another may not consent to the  
28 taking or detention of the other for prostitution.

29 (b) (1) A person may not violate subsection (a) of this section involving a  
30 victim who is a minor.

31 (2) A person may not knowingly take or detain another with the intent  
32 to use force, threat, coercion, or fraud to compel the other to marry the person or a  
33 third person or perform a sexual act, sexual contact, or vaginal intercourse.

1 (c) (1) (i) Except as provided in paragraph (2) of this subsection, a  
2 person who violates subsection (a) of this section is guilty of the misdemeanor of  
3 human trafficking and on conviction is subject to imprisonment not exceeding 10 years  
4 or a fine not exceeding \$5,000 or both.

5 (ii) A person who violates subsection (a) of this section is subject  
6 to § 5-106(b) of the Courts Article.

7 (2) A person who violates subsection (b) of this section is guilty of the  
8 felony of human trafficking and on conviction is subject to imprisonment not exceeding  
9 25 years or a fine not exceeding \$15,000 or both.

10 (3) (I) IN ADDITION TO THE PENALTIES PROVIDED IN THIS  
11 SUBSECTION, THE COURT MAY ORDER A PERSON CONVICTED UNDER THIS  
12 SECTION TO PAY RESTITUTION TO THE VICTIM FOR EXPENSES INCURRED BY  
13 THE VICTIM:

14 1. THAT ARE A DIRECT RESULT OF THE PERSON'S  
15 CRIMINAL ACTIONS;

16 2. IN RELOCATING THE VICTIM AND THE VICTIM'S  
17 FAMILY AWAY FROM THE PERSON OR THE PERSON'S ASSOCIATES; OR

18 3. IN THE REPATRIATION OF THE VICTIM OR THE  
19 VICTIM'S FAMILY TO THE VICTIM'S COUNTRY OF CITIZENSHIP IF THE  
20 PREPONDERANCE OF THE EVIDENCE SHOWS THAT THE VICTIM WAS BROUGHT  
21 TO THE UNITED STATES BY FRAUD OR DECEPTION.

22 (II) ANY EXPENSES ALLEGED TO BE INCURRED UNDER THIS  
23 PARAGRAPH MAY BE VERIFIED BY:

24 1. A LAW ENFORCEMENT OFFICER, AS TO EXPENSES  
25 ALLEGEDLY INCURRED IN RELATION TO THE SAFETY OF THE VICTIM OR THE  
26 VICTIM'S FAMILY; OR

27 2. A PROVIDER OF MENTAL HEALTH SERVICES, AS TO  
28 EXPENSES ALLEGEDLY INCURRED IN RELATION TO THE EMOTIONAL  
29 WELL-BEING OF THE VICTIM.

30 (III) THE RETURN OF THE VICTIM TO THE VICTIM'S COUNTRY  
31 OF CITIZENSHIP OR ANY OTHER ABSENCE OF THE VICTIM FROM THE VICTIM'S  
32 COUNTRY OF RESIDENCE MAY NOT BE A BASIS FOR A DENIAL OF RESTITUTION.

1                   **(IV) THIS PARAGRAPH MAY NOT BE CONSTRUED TO LIMIT**  
2 **THE RIGHT OF A PERSON TO RESTITUTION UNDER TITLE 11, SUBTITLE 6 OF THE**  
3 **CRIMINAL PROCEDURE ARTICLE.**

4                   **(V) EXCEPT AS OTHERWISE PROVIDED IN THIS PARAGRAPH,**  
5 **THE PROVISIONS OF TITLE 11, SUBTITLE 6 OF THE CRIMINAL PROCEDURE**  
6 **ARTICLE APPLY TO AN ORDER OF RESTITUTION UNDER THIS PARAGRAPH.**

7           (d) A person who violates this section may be charged, tried, and sentenced  
8 in any county in or through which the person transported or attempted to transport  
9 the other.

10           (e) (1) A person who knowingly benefits financially or by receiving  
11 anything of value from participation in a venture that includes an act described in  
12 subsection (a) or (b) of this section is subject to the same penalties that would apply if  
13 the person had violated that subsection.

14           (2) A person who knowingly aids, abets, or conspires with one or more  
15 other persons to violate any subsection of this section is subject to the same penalties  
16 that apply for a violation of that subsection.

#### 17                                   **Article – Criminal Procedure**

#### 18           **8–302.**

19           **(A) A PERSON CONVICTED OF PROSTITUTION UNDER § 11–306 OF THE**  
20 **CRIMINAL LAW ARTICLE MAY FILE A PETITION TO VACATE THE JUDGMENT IF**  
21 **THE PERSON’S INVOLVEMENT IN PROSTITUTION WAS THE RESULT OF THE**  
22 **PERSON HAVING BEEN A VICTIM OF HUMAN TRAFFICKING UNDER § 11–303 OF**  
23 **THE CRIMINAL LAW ARTICLE OR UNDER FEDERAL LAW.**

24           **(B) A PETITION FILED UNDER THIS SECTION SHALL:**

25                   **(1) BE IN WRITING;**

26                   **(2) BE MADE WITHIN A REASONABLE PERIOD OF TIME AFTER THE**  
27 **PETITIONER IS NO LONGER THE VICTIM OF HUMAN TRAFFICKING OR HAS**  
28 **SOUGHT SERVICES FOR VICTIMS OF HUMAN TRAFFICKING, IN LIGHT OF**  
29 **CONCERNS FOR THE SAFETY OF THE PETITIONER, THE PETITIONER’S FAMILY,**  
30 **OR OTHER VICTIMS OF HUMAN TRAFFICKING;**

31                   **(3) DESCRIBE THE EVIDENCE AND PROVIDE COPIES OF ANY**  
32 **OFFICIAL DOCUMENTS SHOWING THAT THE PETITIONER WAS THE VICTIM OF**  
33 **HUMAN TRAFFICKING AND THAT THE PETITIONER’S INVOLVEMENT IN**

1 PROSTITUTION WAS THE RESULT OF THE PETITIONER HAVING BEEN THE VICTIM  
2 OF HUMAN TRAFFICKING; AND

3 (4) IF THE PETITIONER WANTS A HEARING, INCLUDE A REQUEST  
4 FOR A HEARING.

5 (C) (1) A PETITIONER SHALL NOTIFY THE STATE IN WRITING OF THE  
6 FILING OF A PETITION UNDER THIS SECTION.

7 (2) THE STATE MAY FILE A RESPONSE TO THE PETITION WITHIN  
8 90 DAYS AFTER RECEIPT OF THE NOTICE REQUIRED UNDER THIS SUBSECTION  
9 OR WITHIN THE PERIOD OF TIME THAT THE COURT ORDERS.

10 (D) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS  
11 SUBSECTION, THE COURT SHALL HOLD A HEARING ON A PETITION FILED UNDER  
12 THIS SECTION IF THE PETITION SATISFIES THE REQUIREMENTS OF SUBSECTION  
13 (B) OF THIS SECTION AND A HEARING WAS REQUESTED.

14 (2) THE COURT MAY DISMISS A PETITION WITHOUT A HEARING IF  
15 THE COURT FINDS THAT THE PETITION FAILS TO ASSERT GROUNDS ON WHICH  
16 RELIEF MAY BE GRANTED.

17 (E) (1) IN RULING ON A PETITION FILED UNDER THIS SECTION, THE  
18 COURT MAY VACATE THE CONVICTION, MODIFY THE SENTENCE, OR GRANT A  
19 NEW TRIAL, AS THE COURT CONSIDERS APPROPRIATE.

20 (2) THE COURT SHALL STATE THE REASONS FOR ITS RULING ON  
21 THE RECORD.

22 (F) A PETITIONER IN A PROCEEDING UNDER THIS SECTION HAS THE  
23 BURDEN OF PROOF.

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
25 October 1, 2011.